

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant: Paul and Nancy Hamel

Date Application filed with the Town Clerk: February 15, 2005

Nature of request: Petitioner seeks a Special Permit, under Section 9.22 of the Zoning Bylaw, to use the existing building (formerly Realty World Sawicki) to house small professional offices.

Location of property: 462 Main Street, (Map 14B, Parcel 68, R-G Zone)

Legal notice: Published in the Daily Hampshire Gazette on February 23, 2005, and March 2, 2005, and sent to abutters on February 23, 2005.

Board members: Tom Simpson, Barbara Ford and Susan Pynchon

Submissions:

The applicants submitted the following documents:

- A Management Plan which discusses the past use of the property, the proposed use, the existing house and barn, previous Special Permits, the number and size of the existing office spaces and proposed number of tenants, care and maintenance of the property, trash and recycling, parking and traffic flow, exterior lighting, signage, storage, and structural changes;
- Addendum to Management Plan listing six proposed tenants for the office spaces;
- A letter, dated March 9, 2005, from Attorney John F. Edwards, owner of the property at 437 Main Street, Amherst, regarding permission for overflow parking for Paul and Nancy Hamel;
- A plan, undated, entitled "Existing Site Plan" showing property lines, plantings, the existing buildings and parking, existing driveway and locations of exterior lighting;
- A plan, undated, entitled "Existing Conditions" showing the existing floor plans for the first and second floors.

The Planning Department submitted Memorandum Re: ZBA FY2005-00018, dated March 2, 2005, which discussed zoning, previous permits, dimensional requirements, parking, plantings, lighting, historical issues, the management plan, universal accessibility and the previously existing caretaker apartment.

Site Visit: March 8, 2005

Board members Tom Simpson and Barbara Ford attended the site visit. Susan Pynchon was unable to attend due to weather-related problems. They were met by the applicant and property owner, Nancy Hamel. At the site visit the Board observed the following:

- The location of the property in a neighborhood of older homes on large lots surrounded by mature trees, adjacent to the railroad tracks;
- The existing, well-maintained, historical, wood frame house;
- The parking area which appeared to be able to accommodate 14 standard-sized parking spaces, or 13 standard-sized cars plus one universally-accessible parking space, although the site plan shows only 12 spaces;
- The well-maintained, mature landscape plantings;
- The property of Attorney John Edwards, located across the street, which had been used by a previous tenant for overflow parking;
- The newly-painted interior of the building, and newly-refinished wood floors, including rooms on the first floor and the second floor, hallways, bathrooms and exits;
- The ramp from the parking area up to the porch;
- The width of the southernmost door from the porch into the house, which appeared to be able to accommodate the passage of a wheelchair;
- The location of the barn behind the house.

Public Hearing: March 10, 2005.

The public hearing was held in the Town Room, Town Hall. Nancy Hamel presented the petition. She made the following statements:

- The previous occupant of the building, Realty World Sawicki, had a Special Permit to operate a real estate office and a caretaker apartment at this location;
- Sawicki outgrew the space and moved its offices to University Drive;
- Nancy Hamel works for Sawicki;
- Paul and Nancy Hamel would like to create seven distinct offices in the building;
- Ms. Hamel predicts that the impact on the neighborhood will be less than when the offices were used by Sawicki, because there will be fewer people in the building on a regular basis and fewer vehicular trips in and out of the site;
- She has submitted a list of prospective tenants;
- The building will not change;
- A partition has been installed to allow all tenants access to the bathrooms while allowing tenants' offices to be locked;
- Interior emergency lighting has been added;
- The recent minor renovations were approved by the Building Department;

- The building has been updated and painted; the flooring has been refinished and new carpeting has been installed;
- Ms. Hamel would like to have a satellite office for her real estate work;
- She is pleased to own this building, which is close to downtown and close to the historic Dickinson Homestead;
- She was accompanied by neighboring landowners, Paul DiBenedetto and John Edwards, who were appearing in her support;
- A multi-family may be more detrimental to the neighborhood than offices;
- She and her husband have owned the property for eight years;
- They have improved the exterior with new paint, new shutters and new clapboards.

Mr. Simpson inquired about the previous tenants, all of whom worked for one company, Realty World Sawicki.

Ms. Hamel responded that Realty World Sawicki had twenty-two people working out of the building, some of the offices housing 4 or 5 desks, some with 2 desks. Ms. Hamel is proposing no more than 1 or 2 people per room with 2 of the rooms to be used as common rooms.

There was further discussion about the previous company with as many as 25 employees coming and going. Now there would be 7 offices with 1 or 2 people in each. There may be one client at a time being seen by one of the office occupants. One of the proposed tenants will be traveling most of the time but using the office as a home base.

Mr. Simpson inquired about parking.

Ms. Hamel responded that there was plenty of parking on the site and that she had an arrangement with Attorney John Edwards across the street to accommodate overflow parking. She stated that there were 14 parking spaces on her property. Mr. Edwards had submitted a letter allowing the Hamels' tenants to use his lot for additional parking needs.

Mr. Simpson inquired about the maximum number of people expected to occupy the building. Ms. Hamel could not state exactly how many people would occupy the building, but stated that she is looking for "low impact" tenants.

Mr. Simpson noted that the site plan shows 12 parking spaces. He inquired about the hours of operation.

Ms. Hamel stated that there will generally be no one in the building after 9:00 p.m. However, from time to time one of the tenants may need to come into the building after 9:00 p.m. to make a phone call. She will make the hours of operation a condition of the lease. There also won't be any parties allowed in the building.

Mr. Simpson noted that the applicant is not asking for a permit for a sign at this time. He also noted that the Planning Department had received a phone call from John Wroblewski, owner of the property at 22 High Street, an abutting property, in support of the application.

Ms. Ford inquired about whether there would be a limit on client visits after 9:00 p.m. as well as a limit on office use. The applicant agreed not to allow client visits after 9:00 p.m.

Bonnie Weeks, the Building Commissioner, commented on the tenant list, stating that most of the uses described in the tenant list would have been allowed under a Special Permit in the R-G district when the first Special Permit was granted for offices in this building. However one of the uses would not have been allowed at that time. She was referring to the Aesthetician, who would fall under the category of Section 3.351, Personal Care Establishments. Ms. Weeks noted that the Board should be aware that in granting a Special Permit to include this use the Board would need to make a finding under Section 9.22 of the Bylaw, (expansion of a non-conforming use), that this use (aesthetician) is not substantially more detrimental to the neighborhood than the existing non-conforming use (offices). Ms. Weeks also noted that the limited size of the proposed aesthetician's office may make it more acceptable to the Board, and that the Board might wish to include in the conditions for this permit a limitation on the size of the aesthetician's business, such as that not more than one aesthetician would be allowed to conduct business in this office and not more than one client would be served at a time.

Ms. Hamel added that the aesthetician in question uses all natural products, and would provide her services from one room, serving one client at a time. Ms. Hamel predicted that the business would have minimal impact, not like a beauty shop which has a constant flow of traffic in and out. There would be no nail treatments, just facials and body treatments.

Ms. Weeks also noted that the Section of the Bylaw covering Home Occupations would allow a beautician to operate a business under a Special Permit, as an accessory use to a residential use in the R-G Zone.

Three members of the public spoke in favor of the proposal.

Paul DiBenedetto of 236 Aubinwood Road, and owner of the property at 640 Main Street, a multi-family house, spoke in favor of the petition.

John Edwards, owner of 437 Main Street, spoke in favor of the petition. He bought his property in 1997. Realty World Sawicki had been located at 462 Main Street since then until they moved last fall. Even when Sawicki was operating at full capacity with 25 staff members present, they were not a busy, noisy neighbor. He has no problems with small businesses being located across the street. In his opinion, multi-family housing is more disruptive to the neighborhood than offices.

John Domian of Kellogg Avenue stated that the building and grounds were kept in a neat condition. The building does not look like office space. The building is adjacent to the railroad tracks and has an office building and a VFW Hall across the street. He supports the petition.

Mr. Simpson asked if there were a problem with adding parking on the site. Ms. Hamel stated that there is room to add more parking spaces, that the site is $\frac{3}{4}$ of an acre, and that she would support adding more parking spaces if she thought it was necessary for the convenience of her tenants and their clients. However, she thought that the existing parking area was adequate since many of the tenants would not be going in and out as frequently as the previous tenants nor would all of them be parked on site all day.

There was a discussion of the types of vehicles that would be parked on-site since two of the tenants are associated with the building, painting and landscaping trades. Ms. Hamel noted that the Management Plan states that "tenants will not be allowed to park vehicles larger than SUV's or pickup trucks in the parking area." She also stated that there would be no storage of building or landscaping materials on the site. The tenants in question would use the building and site purely for office uses.

Ms. Hamel noted that the types of vehicles allowed to be parked on the site would also include vans and, occasionally, the vehicles of maintenance and repair people hired to work on the property.

Ms. Ford noted that the Board had received a new letter from Attorney John Edwards regarding the use of his property for overflow parking.

Barbara Ford MOVED to close the evidentiary portion of the public hearing. Susan Pyncheon SECONDED the motion. The Board VOTED unanimously to close the evidentiary portion of the public hearing.

Public Meeting

The Board continued the public meeting (the deliberative portion of the public hearing) to April 14, 2005, at 7:00 p.m.

Continued Public Meeting: April 14, 2005

At the continued Public Meeting, the Board discussed the application.

The Board expressed general support for the application. Mr. Simpson stated that there was a need for six (6) additional parking spaces to accommodate tenants and their clients and that the driveway should be 18 feet wide for two-way traffic, in accordance with Section 7.104. (The existing driveway, as shown on the site plan submitted with the application, is 16 feet wide.)

The Board discussed where the additional 6 parking spaces could be accommodated. Board members examined the previous site plan prepared by Nina Weyl, dated April 1, 2004, which had been submitted in 2004 with the application for Special Permit ZBA FY2004-00034. The 2004 site plan showed proposed locations for 13 parking spaces in addition to those already existing on the site.

Mr. Simpson noted that there might be as many as 15 tenants of the offices in the building and that the 12 or 14 parking spaces that exist now according to the current site plan were not enough to accommodate all of the tenants at one time, plus their respective clients. The Board noted that it could not predict what the parking needs of future tenants would be. The Board agreed that there is a need to create enough parking now, as part of this Special Permit, to adequately accommodate tenants for the long term, not just for this particular group of tenants listed in the Addendum to the Management Plan.

Ms. Pyncheon noted that Main Street is a busy street and that providing overflow parking across the street might not be safe.

The Board discussed the need for more screening for the additional parking spaces. Ms. Weeks noted that Section 7.112 of the Zoning Bylaw requires screening for 5 or more parking spaces.

Mr. Simpson summarized the Board's concerns as follows:

- There is a need for more parking spaces.
- There is a need for screening of the new parking spaces.
- The driveway should be wider.
- There is a need to control the types of tenants who will occupy the offices.

The Board reiterated that there is to be neither parking of construction equipment nor storage of construction materials on the site, other than that being used to maintain or repair the site or building at 462 Main Street.

The Board discussed the types of tenants that might be allowed in the building. They discussed the Bylaw Sections 3.358 and 3.359 which describe business office uses and Section 3.351.0 which describes barber, beauty, hair and tanning salon uses.

The Board determined that it could limit the types of uses to those falling under the business offices uses described in Sections 3.358 and 3.359 and allow one of the spaces to be used by one aesthetician, under Section 3.351.0 as an expansion of a non-conforming use under Section 9.22.

The Board noted that if another office space became available and the proposed tenant was another aesthetician the applicant would need to come back to the Board for a modification of the Special Permit.

Findings:

Under Zoning Bylaw Section 9.22 the Board found that:

- The proposed use as office space, a change from one real estate company to seven separate tenants, is not substantially different in character or in its effect on the neighborhood or on property in the vicinity than the real estate office use (and caretaker apartment) which had operated in this location since the first Special Permit was granted in 1980, because the number of tenants, visitors and clients coming and going from the building on a daily basis is expected to be fewer than it was for the previous use and otherwise the activities will be essentially the same types of office activities.
- The proposed use of one office space by an aesthetician, although an expansion of a non-conforming use to include one personal care establishment, is not substantially more detrimental to the neighborhood than the existing non-conforming use because the use is customarily allowed as an accessory home occupation in a residential neighborhood and the conditions of the permit will limit the number of aestheticians and clients on the premises at one time to one each.

Under Zoning Bylaw Section 10.38 the Board found that:

10.380 and 10.381 – The proposal is suitably located in the neighborhood and is compatible with existing uses because the building has been operating as a real estate office building since 1980 in a suitable, quiet fashion and the proposed new office uses and small aesthetician's office will not be substantially different in their effect on the neighborhood or on the zoning district from the real estate use that had been there for many years.

10.382 – The proposal would not constitute a nuisance because there will be no noise, odor, dust, vibration, lights or other visually offensive structures or site features generated by the proposed uses.

- 10.383 – The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians because there will be adequate parking on site when the additional parking spaces are installed, as required by the conditions of this Special Permit, to accommodate the needs of tenants and visitors.
- 10.384 – Adequate and appropriate facilities would be provided for the proper operation of the proposed use because a similar use has been appropriately accommodated in this building, on this site, since 1980 and the building has been upgraded in terms of emergency lighting, bathroom facilities, locks on individual offices and an additional egress to serve the new tenants.
- 10.385 – The proposal reasonably protects the adjoining premises against detrimental or offensive uses on the site because the parking area and driveway abut the railroad track, not a residence, and there will be an additional evergreen hedge, as required by the conditions of this Special Permit, to screen headlights on the east side of the property. In addition, the Management Plan and the Addendum to the Management Plan, the Tenant List, and the conditions of this Special Permit, describe in detail the types of activities that are to occur on the site, which are not detrimental or offensive. The conditions of the Special Permit require that the property be operated in accordance with the Management Plan.
- 10.386 – The proposal ensures that it is in conformance with the Parking and Sign regulations of the town because there will be adequate parking on site, as required by the conditions of this Special Permit, to meet the requirements Section 7 of the Zoning Bylaw. There will be no sign other than the one existing on the front lawn. Changes in the graphic design of this existing sign will be presented to the Board for its review and approval at a public meeting in accordance with the conditions of this Special Permit.
- 10.389 – The proposal provides adequate methods of disposal and/or storage for sewage, refuse, recyclables and other wastes because the site is connected to a town sanitary sewer, refuse and recyclables will be stored in bins to be located behind the main building and the owners will hire a trucking company to remove trash and recycling on a weekly basis.
- 10.393 – The proposal provides protection of adjacent properties by minimizing the intrusion of lighting because the parking area is not immediately adjacent to residences, and there will be an extended evergreen hedge to provide screening of headlights. In addition, a condition of the Special Permit requires that all exterior lights shall be downcast.
- 10.395 – The proposal does not create disharmony with respect to the use, scale and architecture of existing buildings in the vicinity because no changes are being proposed to the exterior of the building.

10.398 – The proposal is in harmony with the general purpose and intent of the Zoning Bylaw because it protects the health, safety, convenience and general welfare of the inhabitants of the Town of Amherst.

Zoning Board Decision

Susan Pynchon MOVED to approve the application with conditions. Barbara Ford SECONDED the motion.

For all the reasons stated above, and based on the Management Plan and the Addendum to the Management Plan approved on April 14, 2005, and based on the Site Plan which is to be revised in accordance with Conditions #4 and 5 of the Special Permit and submitted for approval, the Board VOTED unanimously to GRANT a Special Permit, with conditions, to Paul and Nancy Hamel to use the existing building (formerly Realty World Sawicki) to house small professional offices.

TOM SIMPSON

BARBARA FORD

SUSAN PYNCHON

FILED THIS _____ day of _____, 2005 at _____,
in the office of the Amherst Town Clerk _____.
TWENTY-DAY APPEAL period expires, _____ 2005.
NOTICE OF DECISION mailed this _____ day of _____, 2005
to the attached list of addresses by _____, for the Board.
NOTICE OF PERMIT or Variance filed this _____ day of _____, 2005,
in the Hampshire County Registry of Deeds.

Town of Amherst
Zoning Board of Appeals

SPECIAL PERMIT

The Amherst Zoning Board of Appeals, based on the Management Plan and the Addendum to the Management Plan approved on April 14, 2005, and based on the the Site Plan which is to be revised in accordance with Conditions #4 and 5 of the Special Permit, as noted below, hereby grants a Special Permit, with conditions, to Paul and Nancy Hamel to use the existing building (formerly Realty World Sawicki) to house small professional offices, with the following conditions:

1. The offices in the building shall be occupied only for business or professional offices as described in Sections 3.358 and 3.359 of the Zoning Bylaw, plus one aesthetician as described in Section 3.351.0. The aesthetician shall be limited to one operator who will serve one client at a time.
2. Business shall not be conducted after 9:00 p.m.
3. There shall be no exterior changes to the building.
4. There shall be 20 parking spaces and the driveway shall be 18 feet wide from the parking area to the street.
5. The applicant shall submit to the Board for review and approval at its June 23, 2005, public meeting a revised Site Plan showing the following items:
 - Twenty parking spaces
 - An eighteen (18) foot wide driveway
 - Landscape screening for the new parking spaces, at least three (3) feet high, to shield the residences on the east side of the property
 - The existing sign location labeled on the plan.
6. The Board approves the existing sign as constructed and located. The applicant will present to the Board, for review and approval, a design for the graphic content of the main sign and a conceptual plan for signs for the individual tenants, at a public meeting on June 23, 2005.
7. This permit is not transferable without reapplication and public hearing before the Zoning Board of Appeals.

8. Exterior lighting shall be downcast and shall not shine onto adjacent streets or properties.
9. The building and site shall be managed according to the Management Plan approved on April 14, 2005.

TOM SIMPSON, Chair
Amherst Zoning Board of Appeals

DATE